



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 18, 2005

Ms. Ruth H. Soucy
Open Records Division
Comptroller of Public Accounts
P.O. Box 13528
Austin, Texas 78711-3528

OR2005-03322

Dear Ms. Soucy:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 221349.

The Comptroller of Public Accounts (the "comptroller") received a request for information relating to closed cases during a specified time interval that involved tax refunds or tax liability decisions concerning a named entity. You inform us that the comptroller has released some of the requested information. You seek to withhold other responsive information under section 552.101 of the Government Code. We have considered your arguments and have reviewed the information you submitted.

Section 552.101 excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses information that is made confidential by statute. You assert that some of the submitted information is confidential under section 404.058 of the Government Code. Section 404.058 is applicable to information relating to outstanding state warrants and provides in part:

(b) The warrant number of an outstanding warrant is excepted from the requirements of Section 552.021 [of the Government Code] if the warrant is issued by the comptroller.

(c) A person who issues a warrant under Section 403.060(a) [of the Government Code] may disclose the warrant number of the warrant to a person other than the comptroller only if the comptroller has

(1) informed the person that the warrant is not an outstanding warrant; or

(2) authorized or required the disclosure.

Gov't Code § 404.058(b)-(c); *see also id.* § 404.058(d)(1)-(2) (defining “outstanding warrant” and “warrant number”). You inform us that some of the submitted information consists of the warrant numbers of warrants that were outstanding when the comptroller received this request for information. You do not inform us that these warrant numbers are subject to disclosure under section 404.058(c). We therefore conclude that the outstanding warrant numbers that you have marked must be withheld from the requestor under section 552.101 of the Government Code in conjunction with section 404.058(b) of the Government Code.

Next, we address your arguments with regard to the submitted administrative hearings decision. The public availability of this information is governed by section 552.025 of the Act, which provides as follows:

(a) A governmental body with taxing authority that issues a written determination letter, technical advice memorandum, or ruling that concerns a tax matter shall index the letter, memorandum, or ruling by subject matter.

(b) On request, the governmental body shall make the index prepared under Subsection (a) and the document itself available to the public, subject to the provisions of this chapter.

(c) Subchapter C [of chapter 552 of the Government Code] does not authorize withholding from the public or limiting the availability to the public of a written determination letter, technical advice memorandum, or ruling that concerns a tax matter and that is issued by a governmental body with taxing authority.

Gov't Code § 552.025. Thus, section 552.025 provides that a governmental body with taxing authority that issues rulings encompassed by section 552.025 shall make such rulings available to the public and that subchapter C of the Act, which contains all of the Act's exceptions to required public disclosure, does not authorize withholding such rulings from the public. *See id.* § 552.025(b)-(c). The comptroller is a governmental body with taxing authority. *See* Tax Code tit. 2.

In this instance, you contend that the submitted administrative hearings decision contains information that is excepted from public disclosure under section 552.101 of the Act.¹ We

¹Section 552.101 excepts from disclosure “information considered to be confidential by law, either constitutional, statutory, or by judicial decision.” Gov't Code § 552.101.

note, however, that section 552.101 is one of the exceptions found in subchapter C of the Act. Under section 552.025(c), the exceptions to public disclosure found in subchapter C are not applicable to information encompassed by section 552.025(a) that must be made available to the public under section 552.025(b). As you appear to concede, the submitted administrative hearings decision is a written determination letter, technical advice memorandum, or ruling concerning a tax matter that was issued by a governmental body with taxing authority. Therefore, the comptroller may not withhold information contained in the administrative hearings decision under section 552.101.

You also ask whether, under certain language found in section 552.025(b), the administrative hearings decision would be subject to section 552.022 of the Act. Section 552.025(b) provides that “[o]n request, the governmental body shall make the index prepared under Subsection (a) and the document itself available to the public, *subject to the provisions of this chapter.*” Gov’t Code § 552.025(b) (emphasis added). You point out that “the provisions of [chapter 552 of the Government Code]” include section 552.022. You note that under this section, “final opinions, including concurring and dissenting opinions, and orders issued in the adjudication of cases” are made expressly public unless they are expressly confidential under other law. Gov’t Code § 552.022(a)(12).

You contend that if the submitted administrative hearings decision is subject to section 552.022(a)(12), then the comptroller may withhold information contained in the decision that is expressly confidential under other law. Even assuming, however, that section 552.022(a)(12) is applicable to the submitted information, we believe that the public availability of this particular information is governed by section 552.025. *See Holmes v. Morales*, 924 S.W.2d 920, 923 (1996) (when two sections of act apply, specific section controls over general provision); *Wallace v. Tex. Dep’t of Crim. Justice*, 36 S.W.3d 607, 611 (Tex. App.—Houston [1st Dist.] 2000, review denied) (assuming that specific deadline for filing grievance claim conflicted with general two-year limitation period for tort claims, specific provision controlled).

In summary: (1) the outstanding warrant numbers are confidential under section 404.058 of the Government Code and must be withheld from the requestor under 552.101 of the Government Code; and (2) the administrative hearings decision must be released in its entirety under section 552.025.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full

benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

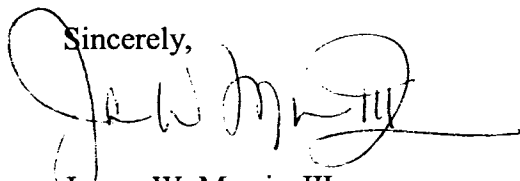
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "James W. Morris, III", with a stylized flourish at the end.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 221349

Enc: Submitted documents

c: Mr. Mark Montini
1765 Ridgemill Terrace
Dacula, Georgia 30019
(w/o enclosures)